

**September 12, 2006**

SUBJECT: Award of Bid No. F0504-71 to Remodel the Restrooms at the Sunnyvale Office Center and Braly Park and Approval of Budget Modification No. 10

REPORT IN BRIEF

Approval is requested for the award of a contract to Kuehne Construction of Sunnyvale to remodel the restrooms at the Sunnyvale Office Center and Braly Park for the Department of Parks and Recreation Facilities Services Division. This project is required for compliance with the federally-mandated Americans with Disabilities Act (ADA).

BACKGROUND

The scope of work for this project focuses on improved access for disabled persons to the restrooms in the 400 building at the Sunnyvale Office Center (505 West Olive Avenue) and Braly Park (704 Daffodil Court). Recent improvements in these facilities require the related restrooms to be made ADA compliant. Included in the project are the installation of fiberglass reinforced paneling on the walls and new partitions, fixtures and accessories (i.e., hand driers, grab bars, etc.). The design encompasses components and layout necessary to meet federally-mandated ADA requirements in City buildings.

DISCUSSION

Bid specifications were prepared by Facilities and Purchasing staff. The bid package was directly distributed to local contractors known to perform this type of work.

Sealed bids were publicly opened August 2, 2006. Two responsive bids were received.

Bidder**Total Bid**

Kuehne Construction of Sunnyvale	\$132,187
W.G. Fritz Construction of San Jose	\$142,273

Staff recommends award of contract to Kuehne Construction, the lowest responsive and responsible bidder.

A determination was made that this project will have no significant effect on the environment in accordance with CEQA guidelines for categorically exempt projects.

FISCAL IMPACT

Project costs include:

Construction	\$132,187
Contingency (15% of construction)	<u>\$ 19,828</u>
Total cost	\$152,015

This project will be funded by the following sources:

818550 Park Buildings – Rehabilitation	\$67,950
824980 Sunnyvale Office Center Rehabilitation	<u>\$84,065</u>
Total	\$152,015

Both Project Nos. 818550 and 824980 have unspent funds from FY 2005/2006 that are available to cover the cost of this project. Budget Modification No. 10 has been prepared to carryover a total of \$96,671 from these projects to cover the amount not already budgeted in FY 2006/2007.

**BUDGET MODIFICATION NO. 10
FISCAL YEAR 2006/2007**

	Current	Increase (Decrease)	Revised
General Services Fund – Sunnyvale Office Center Subfund			
<u>Expenditures:</u>			
824980 – Sunnyvale Office Center Rehabilitation	\$0	\$84,065	\$84,065
<u>Reserves:</u>			
Capital Projects Reserve	\$10,368,039	(\$84,065)	\$10,283,974

**Infrastructure Renovation and Replacement Fund – General Fund Assets
Subfund**

<u>Expenditures:</u>			
818550 – Park Buildings Rehabilitation	\$55,344	\$12,606	\$67,950
<u>Reserves:</u>			
Infrastructure Reserve	\$9,817,957	(\$12,606)	\$9,805,351

RECOMMENDATION

It is recommended that Council:

1. Award a contract, in substantially the same form as the attached draft and in the amount of \$132,187, to Kuehne Construction to remodel the bathrooms at Sunnyvale Office Center and Braly Park; and
2. Approve a project contingency in the amount of \$19,828.
3. Approve Budget Modification No. 10.

Prepared by:

Elaine Wesely
Purchasing Officer

Reviewed by:

Mary J. Bradley
Director, Finance

Reviewed by:

David A. Lewis
Director, Parks and Recreation

Approved by:

Amy Chan
City Manager

Attachment

Draft Contact

DRAFT

CONTRACT

RESTROOM REMODEL AT THE SUNNYVALE OFFICE CENTER AND BRALY PARK

THIS CONTRACT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California ("City") and Kuehne Construction, a California corporation ("Contractor").

RECITALS:

The parties to this Contract have mutually covenanted and agreed, as follows:

1. **The Contract Documents.** The complete Contract consists of the following documents: Invitation for Bids No. F0504-71, consisting of a Notice Inviting Bids, Instructions to Bidders, Specifications, Terms and Conditions; Attachments "D" and "E" (Detailed Project Specifications); Addendum No. 1; Performance Bond; Payment Bond; and Contractor's completed Bid Form. These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents.

Any and all obligations of the City and the Contractor are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. **The Work.** Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner, the work of completing disabled access upgrades at the Sunnyvale Office Center, 505 West Olive Avenue, and Braly Park, 704 Daffodil Court, both in Sunnyvale, California, as called for, and in the manner designated in, and in strict conformity with, the specifications, terms and conditions set forth in Invitation for Bids No. F0504-71.

It is understood and agreed that tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished and work performed and completed as required in the bid documents under the sole direction and control of the Contractor, and subject to inspection and approval of the City. The City hereby designates as its representative for the purpose of this contract Larry laquinto, Department of Parks and Recreation Facilities Services Division.

3. **Contract Price.** The City agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the lump sum of One Hundred Thirty Two Thousand One Hundred Eighty Seven and no/100 Dollars (\$132,187.00) subject to additions and deductions as provided in the Contract Documents and in accordance with Contract Documents.

Contractor shall submit invoices no more frequently than monthly. Payment will be made within thirty (30) days of receipt of an accurate, itemized invoice by City's Accounts Payable Unit.

4. Permits; Compliance with Law. Contractor shall, at its expense, obtain all necessary permits and licenses, easements, etc., for the construction of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and to the preservation of the public health and safety.

5. Inspection by City. Contractor shall at all times maintain proper facilities and provide safe access for inspection by the City to all parts of the work. Where the specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the City of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by City, be uncovered for examination at the Contractor's expense.

6. Extra or Additional Work and Changes. Should City at any time during the progress of the work request any alterations, deviations, additions or omissions from the specifications or plans or other Contract Documents, it shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract price, as the case may be, by a fair and reasonable valuation, agreed to in writing between the parties hereto. No extra work shall be performed or change be made unless in pursuance of a written order from City's Purchasing Division, stating that the extra work or change is authorized and no claim for an addition to the contract sum shall be valid unless so ordered.

7. Time for Completion. All work under this contract shall be completed before the expiration of forty-five (45) calendar days from the date specified in the Notice to Proceed.

If Contractor shall be delayed in the work by the acts or neglect of City or its employees, or those under it by contract or otherwise, or by changes ordered in the work, or by strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the City, or by any cause which the City shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the City may decide.

This provision does not exclude the recovery of damages for delay by either party under other provisions.

8. Termination for Breach, etc. If Contractor should file a bankruptcy petition and/or be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of insolvency, or if Contractor or any subcontractors should violate any of the provisions of the Contract, City may serve written notice upon Contractor and its surety of City's intention to terminate the Contract. The notice shall contain the reasons for such intention to terminate the Contract; and, unless within ten (10) days after serving such notice, such violation shall cease and satisfactory arrangements for correction thereof be made, upon the expiration of the ten (10) days, the Contract shall cease and terminate. In the event of any such termination, City shall immediately serve written notice thereof upon the surety and the Contractor; and the surety shall have the right to take over and perform the Contract; provided, however, that, if the surety within fifteen (15) days after the serving upon it of notice of termination does not give City written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty (30) days from the date of the serving of such notice, City may take over the work and

prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and its surety shall be liable to City for any excess cost occasioned City thereby. In such event, City may, without liability for so doing, take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefor.

9. City's Right to Withhold Certain Amounts and Make Application Thereof. City may withhold from payment to Contractor such amount or amounts as in its judgment may be necessary to pay just claims against Contractor or any subcontractors for labor and services rendered and materials furnished in and about the work. City may apply such withheld amount or amounts to the payment of such claims in its discretion. In so doing, City shall be deemed the agent of Contractor. Any payment so made by City shall be considered as a payment made under the Contract by City to the Contractor; and City shall not be liable to Contractor for any such payment made in good faith. Such payment may be made without prior judicial determination of the claim or claims.

10. Notice and Service Thereof. All notices required pursuant to this Contract shall be communicated in writing and shall be delivered in person, by commercial courier, or by first class or priority mail delivered by the United States Postal Service. Transmission of notice by facsimile or by telephone may be deemed sufficient if the requirement for written notice is waived, in writing, by the receiving party. Notices delivered in person shall be deemed communicated as of actual receipt. Notices sent by mail or courier service shall be deemed communicated as of three (3) days after mailing or dispatch, unless that date is a date on which there is no mail or delivery service, in which case communication shall be deemed to occur the next mail service or delivery day. The burden of proof of compliance with this requirement for written notice shall be on the sending party. All notices sent pursuant to this Contract shall be addressed as follows:

City: City of Sunnyvale
Department of Finance
Purchasing Division
Attn: Senior Buyer
P. O. Box 3707
Sunnyvale, CA 94088-3707

Contractor: Kuehne Construction
Attn: Jim Kuehne
933 Kifer Road, Suite B
Sunnyvale, CA 94086

11. Assignment of Contract. Neither the Contract, nor any part thereof, nor moneys due or to become due thereunder may be assigned by Contractor without the prior written approval of City.

12. Compliance with Specifications of Materials. Whenever the specifications indicate any material or process or specify by patent or proprietary name or by name of manufacturer, such specifications must be met by Contractor, unless City agrees in writing to some other material, process or article offered by Contractor which is equal in all respects to the one specified.

13. Contract Security. Contractor shall furnish a surety bond in an amount at least equal to 100 percent of the contract price as security for the faithful performance of this Contract. Contractor shall also furnish a separate surety bond in an amount at least equal to 100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond.

14. Insurance. Contractor shall not commence work under this Contract until all insurance required under this paragraph has been obtained; and such insurance has been approved by the City. In addition, Contractor shall not allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish to the City satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract. Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice shall be given in writing to the City of any pending change in the limits of liability or of any cancellation or modification of the policy. Insurance carrier shall be California-admitted.

(a) Compensation Insurance and Employer's Liability Insurance. Contractor shall take out and maintain during the life of this Contract Workers' Compensation Insurance and Employer's Liability Insurance for all of its employees employed at the site of the project. In addition, in case any work is sublet, Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees unless such employees are covered by the protection afforded by Contractor.

In signing this Contract, Contractor makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provision of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(b) General Liability Insurance. Contractor, at its own cost and expense, shall maintain personal injury liability and property damage insurance for the period covered by the Contract in the amount of One Million Dollars (\$1, 000,000.00) per occurrence. Such coverage shall include, but shall not be limited to, protection against claims arising therefrom and damage to property resulting from activities contemplated under this Contract. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the City and shall provide that notice shall be given to City at least thirty (30) days prior to cancellation or material change.

The following endorsements shall be attached to the policy:

Policy shall cover on an "occurrence" basis. Policy must cover personal injuries as well as bodily injuries. Exclusion of contractual liability must be eliminated from personal injury endorsement. Broad form property damage endorsement must be attached. City shall be named as an additional insured on any contracts of insurance under this paragraph (b). Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code. The policies of insurance shall be considered primary insurance before any policies of insurance maintained by City.

(c) Automobile Liability. Contractor, at its own cost and expense, shall maintain automobile insurance for the period covered by the Contract in the amount of One Million Dollars (\$1,000,000.00) combined single limit coverage.

15. Hold Harmless. Contractor agrees to defend, save, indemnify and hold harmless City and all its officers, employees, and agents, against any and all liability, claims, judgments, or demands, including demands arising from injuries or death of persons (Contractor's employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Contractor, save and except claims or litigation arising through the active negligence or willful misconduct of City, or of City's officials, agents, employees, servants, or independent contractors who are directly responsible to City. Contractor shall make good and reimburse City for any expenditures, including reasonable attorneys' fees, City may make by reason of such claim or litigation, and, if requested by City, Contractor shall defend any such suits at the sole cost and expense of Contractor.

16. Accident Prevention. Precaution shall be exercised at all times for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

17. Contractor's Guarantee. City shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to the building, work, or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. Contractor unqualifiedly guarantees the first-class quality of all workmanship and of all materials, apparatus, and equipment used or installed by Contractor or by any subcontractor or supplier in the project which is the subject of this Contract, unless a lesser quality is expressly authorized in the Plans and Specifications, in which event Contractor unqualifiedly guarantees such lesser quality; and that the work as performed by Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom. In case of any defect in work, materials, apparatus or equipment, whether latent or patent, revealed to City within one year of the date of acceptance of completion of this Contract by City, Contractor will forthwith remedy such defect or defects without cost to City.

18. Liquidated Damages. Time shall be the essence of this Contract. If Contractor fails to complete, within the time fixed for such completion, the entire work mentioned and described and contracted to be done and performed, Contractor shall become liable to City for liquidated damages in the sum of Two Hundred Fifty Dollars (\$250.00) for each and every day, of either phase of construction, during which work shall remain uncompleted beyond such time fixed for completion or any lawful extension thereof. The amount specified as liquidated damages is presumed to be the amount of damage sustained by City since it would be impracticable or extremely difficult to fix the actual damage; and the amount of liquidated damages may be deducted by City from moneys due Contractor hereunder, or its assigns and successors at the time of completion, and Contractor, or its assigns and successors at the time of completion, and its sureties shall be liable to City for any excess.

19. Additional Provisions.

None.

IN WITNESS WHEREOF, two identical counterparts of this contract, each of which shall for all purposed be deemed an original thereof, have been duly executed by the parties.

CITY OF SUNNYVALE
a Municipal Corporation, City

Kuehne Construction
Contractor

License No. 842548

By _____
City Manager

By _____

Name and Title

Attest:

By _____

Name and Title

By _____
City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

(Notice: The signatures of the Contractor's officers on this contract must be acknowledged before a notary.)